IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 346 of 2006(C)

CC.76/2005 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM
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PETITIONER: ACCUSED.

TOM JOSEPH, LOVE DALE,
PARUTHIPPARA, THIRUVANANTHAPURAM.

BY ADV. SRI.P.A.AHAMMED

RESPONDENTS: STATE & COMPLAINANT
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1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SOBHA K.C. T.C.NO.8/1627. BAPPUJI NAGAR 37, PONGUMMOODU, MEDICAL COLLEGE P.O. THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.M.RAMESH CHANDER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT .J

Crl.M.C. No. 346 OF 2006

Dated this the 18th day of January 2007

ORDER

The petitioner faces indictment in a prosecution under Section 498 A of the I.P.C . Cognizance has been taken by the learned Magistrate on the basis of the final report submitted by the police after due investigation. The investigation commenced on the basis of a complaint filed by the second respondent, admittedly the wife of the petitioner.

2. The crux of the allegation raised against the petitioner is that during the period from 8-10-2002 to 28-4-2003 the petitioner was guilty of mental and physical cruelty of the culpable variety against the second respondent/ defacto complainant.

3. Summons was issued to the petitioner. It is submitted at the bar that the petitioner has already entered appearance before the learned Magistrate. Charges have not been framed by the court, it is submitted. The petitioner has come to this Court with a prayer that this prosecution initiated against him may be quashed invoking the powers under Section 482 of the Cr.P.C

4. What are the reasons? The learned counsel for the petitioner

submits that during the entire period from 8-10-2002 to 28-4-2003 the spouses were not residing under the same roof, even admittedly. The counsel relies on certain statements made by the defacto complainant in other proceedings initiated by her in which she had alleged that there was strain in the matrimony and separate residence after 3-11-2002.

5. I have been taken through the final report under Section 173. It is not the specific case of the defacto complainant or the prosecution that this spouses were residing under the same roof during the entire period from 8-10-2002 to 28-4-2003. In these circumstances the mere fact that in other proceedings initiated by the defacto complainant, she had admitted that there was separate residence of the spouses after 3-11-2002 cannot justify the prayer for quashing of proceedings invoking the powers under Section 482 of the Cr.P.C

6. The learned counsel for the petitioner then submits that the defacto complainant was having some mental disturbance and the petitioner had only attempted to get her examined by a Psychiatrist at her house and this has triggered the adverse reactions against the petitioner from the defacto complainant. The defacto complainant is a lawyer. She

has some mental disturbance The petitioner was only attempting bonafide to get her treated. Enraged by the attempts of the petitioner, the present allegations are raised by the defacto complainant it is contended.

7. It will be presumptuous on the part of that this Court to attempt to resolve the disputed questions of fact in this proceedings under Section 482 of the Cr.P.C with the available inputs. There cannot possibly be a contention that the allegation raised in this case even if accepted, do not constitute the offence punishable under Section 498 A of the I.P.C. In these circumstances I find absolutely no justification in the prayer to invoke the powers under Section 482 of the Cr.P.C

8. This Crl.M.C. is in these circumstances dismissed. But I may hasten to observe that this dismissal of this of this Crl.M.C by this Court will not in any way fetter the rights of the petitioner to claim discharge/ acquittal at the appropriate stage from the court below.

R.BASANT ,JUDGE

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